

## **NOTICE OF PROPOSED RULEMAKING**

### **TITLE 9, CALIFORNIA CODE OF REGULATIONS AMEND SECTION 1810.203.5 AND ADOPT SECTION 1850.350 REGARDING EARLY AND PERIODIC SCREENING, DIAGNOSIS, AND TREATMENT APPEAL PROCESS**

#### **NATURE OF PROCEEDING**

NOTICE IS HEREBY GIVEN that the Department of Mental Health (DMH) is proposing to take the action described in the Informative Digest.

Any interested person may submit written statements, arguments, or comments relating to this proposal by submitting them in writing, or at the public hearing, whichever comes later, to the contact person listed below. Comments may also be submitted by facsimile (FAX) at (916) 651-3852 or by e-mail to [regulations@dmh.ca.gov](mailto:regulations@dmh.ca.gov). Comments must be submitted prior to **5:00 p.m. on April 21, 2010**.

A public hearing regarding this proposal will be held on Wednesday, April 21, 2010, in the Auditorium at the Department of Water Resources located at 1416 Ninth Street in Sacramento, California. It will start at 1:00 P.M., and end when all comments have been received, or at 5:00 P.M., whichever comes first.

Following the public hearing the Department of Mental Health may thereafter adopt the proposals substantially as described below or may modify the proposals if the modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written comments related to this proposal, or who provide oral testimony, if a public hearing is held, or who have requested notification of any changes to the proposal.

#### **AUTHORITY AND REFERENCE**

Pursuant to the authority vested by Sections 4005.1, and 4027 of the Welfare and Institutions Code, and to implement, interpret or make specific section 5778 of the Welfare and Institutions Code, the Department of Mental Health (DMH) is seeking changes to Division 1 of Title 9 of the California Code of Regulations as follows: amend Section 1810.203.5 and adopt Section 1850.350.

#### **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

The Department is required to implement managed mental health care for Medi-Cal recipients through either a fee-for-service basis of reimbursement or with capitated contracts with counties, counties acting jointly, qualified individuals or organizations or nongovernmental entities. The Department is responsible for assuming specified program oversight authority formerly provided by the State Department of Health Care Services, including but not limited to oversight of certain utilization controls. This oversight responsibility entails, in part, conducting various reviews of Mental Health Plans (MHP), including subcontracting providers, which may result in Medi-Cal disallowances and/or Plans of Correction.

The Department convened and participated in a workgroup with representation from the County mental Health Directors Association (CMHDA), provider (subcontractor) organizations and

Department staff to discuss related issues and explore possible proposals regarding appeals procedures. The chief desire of the subcontractor organizations regarding the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) record review appeals process was to address the fact that subcontractors could not directly appeal to the Department without the MHP's agreement to submit the appeal on the subcontractor's behalf. Additionally, providers wanted assurance that the MHP could not block their appeal submission.

A requirement to develop a progressive appeal process, with the ability for the MHP subcontractors to directly appeal to the Department, was placed in Assembly Bill 1780 as an amendment to Section 5778 of the Welfare and Institutions Code. This bill was signed into law on September 26, 2008 and required the Department to propose a rulemaking package by no later than the end of the 2008-09 fiscal year to address adoption of an appeals process.

This proposed regulation package will provide an appeal process that includes a progressive process to resolve disputes about claims or recoupment relating to specialty mental health services under the Medi-Cal specialty mental health services waiver that result from record reviews of EPSDT providers. These regulations allow for the MHP subcontractor to appeal directly to the Department.

This is the second notice of action in regard to this regulation package. The first notice of action was published on July 10, 2009 and the initial public comment ended on August 24, 2009. The Department is reopening the public comment period to provide an opportunity for further comment on the proposed regulation package.

#### **LOCAL MANDATE**

This proposal does not impose a mandate on local agencies or school districts.

#### **FISCAL IMPACT ESTIMATES**

This proposal does not impose costs on any local agency or school district for which reimbursement would be required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. This proposal does not impose other nondiscretionary costs or savings on local agencies. This proposal does not result in any costs or savings in federal funding to the state.

#### **COSTS OR SAVINGS TO STATE AGENCIES**

No additional costs or savings to state agencies are anticipated.

#### **BUSINESS IMPACT/SMALL BUSINESSES**

The Department of Mental Health has made a determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposal does not affect small businesses as defined by section 11342.610 because an appeal process currently exists without a formal hearing. These regulations add to that existing process without any associated fees. Additionally persons or entities are not mandated to utilize this process and will only do so voluntarily.

#### **ASSESSMENT REGARDING EFFECT ON JOBS/BUSINESSES**

The Department of Mental Health has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

**COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS**

The Department of Mental Health is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

**EFFECT ON HOUSING COSTS:** None

**CONSIDERATION OF ALTERNATIVES:**

The Department of Mental Health must determine that no reasonable alternative considered by it or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which this action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

**CONTACT PERSONS**

Inquiries concerning the proposed adoption of these regulations and written comments may be directed to:

Steve Appel

Department of Mental Health

1600 9th Street, Room 435

Sacramento, CA 95814

(916) 654-2321

Backup Contact:

Gayathri Murthy

Department of Mental Health

1600 9th Street, Room 435

Sacramento, CA 95814

(916) 653-4460

**INITIAL STATEMENT OF REASONS AND INFORMATION**

The Department of Mental Health has prepared an initial statement of the reasons for the proposed action and has available all of the information upon which the proposal is based.

**TEXT OF PROPOSAL**

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained upon request from the Department of Mental Health at 1600 9th Street room 435, Sacramento, CA 95814. These documents may also be viewed and downloaded from the DMH website at [www.dmh.ca.gov](http://www.dmh.ca.gov).

**AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE**

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named above.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named above.

**WEBSITE ACCESS**

Materials regarding this proposal may be found at [www.dmh.ca.gov](http://www.dmh.ca.gov).

## TITLE 9. REHABILITATIVE AND DEVELOPMENTAL SERVICES

### DIVISION 1. DEPARTMENT OF MENTAL HEALTH

#### CHAPTER 11. MEDICAL SPECIALTY MENTAL HEALTH SERVICES

Amend Section 1810.203.5 to read:

1810.203.5 Appeal

"Appeal" means:

(a) *No Change*

(b) *No Change*

(c) *No Change*

(d) A request by an MHP and/or MHP subcontractor for review of client record review findings that resulted in the disallowance of paid claims.

NOTE: Authority cited: Section 14680, Welfare and Institutions Code. Reference: Section 14684, 5778, Welfare and Institutions Code and Title 42, Code of Federal Regulations, Part 438, Subpart F.

Adopt Section 1850.350 to read:

Section 1850.350 MHP/MHP Subcontractor Client Record Review Findings Appeal Process.

(a) MHP and MHP subcontractor appeals process

(1) The appeal process consists of:

(A) An informal appeal process as specified in section 1850.350 (b).

(B) A formal appeal process as specified in section 1850.350 (c).

(2) The appeal process may only be used for disallowances of paid claims resulting from client record review findings.

(b) The informal appeal shall be conducted by a Department review officer to clarify or resolve facts and issues in dispute.

(1) An informal appeal request by an MHP or MHP subcontractor shall be made in writing to the Department within 60 calendar days following the receipt of the client record review findings in dispute.

(2) The informal appeal request shall include:

(A) Written documentation supporting the rationale for the informal appeal for each disallowance in dispute.

(B) Other supporting information and/or material to be considered by the Department.

(C) A contact name, phone number and address.

(D) A statement of whether the MHP or MHP subcontractor requests that a decision be made solely upon the written documentation submitted or in conjunction with a telephone or face-to-face conference.

(3) If an MHP subcontractor is requesting the informal appeal, the MHP subcontractor shall notify the MHP at the same time of filing the request with the Department by sending the MHP:

(A) A copy of the request

(B) Complete documentation supporting the rationale for the appeal.

(4) If an MHP is requesting an informal appeal regarding a matter involving an MHP subcontractor, the MHP shall notify the MHP subcontractor at the same time of filing the request with the Department by sending the MHP subcontractor:

(A) A copy of the request

(B) Complete documentation supporting the rationale for the appeal.

(5) The Department shall render the informal appeal decision in writing based on the information provided within 30 calendar days:

(A) Of receipt of the informal appeal request if the MHP or MHP subcontractor has requested a decision based solely on the written documentation submitted. The date of receipt shall be the date stamped as received by the Department.

or

(B) Of conclusion of the telephone or face-to-face conference, if requested.

(6) Decisions rendered are considered final unless a formal appeal is requested by the entity initiating the informal appeal.

(c) A request for a formal appeal shall be filed, with the State Agency indicated in the informal appeal decision notification, within 30 calendar days of the date of issuance of the decision.

(1) Requests for formal appeal may only be filed after the Department of Mental Health has issued a written decision regarding an informal appeal on the same matter.

(2) Requests for a formal appeal may only be filed by the entity that initiated the informal appeal.

(3) At the same time as specified in section (c), a copy of the request shall be provided by the appellant to the following:

(A) The Department of Mental Health.

(B) The MHP, if an MHP subcontractor is requesting the formal appeal.

(C) The MHP subcontractor, if an MHP is requesting the formal appeal regarding a matter involving an MHP subcontractor.

(d) The formal appeal shall be conducted by an independent hearing officer/administrative law judge.

(e) The formal appeal hearing process shall be conducted in accordance with the procedures contained in California Code of Regulations, Title 22, Division 3, Subdivision 1, Chapter 3, Article 1.5.

(f) The decision of the hearing officer/administrative law judge is final upon adoption.

NOTE: Authority cited: Section 14680, Welfare and Institutions Code. Reference: Sections 5775, 5776, 5778, 14171, Welfare and Institutions Code.

## **INITIAL STATEMENT OF REASONS**

### **California Code of Regulations Title 9. Rehabilitative and Developmental Services Division 1. Department of Mental Health Chapter 11. Medi-Cal Specialty Mental Health Services**

#### **Introduction:**

The Department is required to implement managed mental health care for Medi-Cal recipients through fee-for-service or capitated contracts with counties, counties acting jointly, qualified individuals or organizations or nongovernmental entities. The Department is responsible for assuming specified program oversight authority formerly provided by the State Department of Health Care Services, including, but not limited to oversight of certain utilization controls. This oversight responsibility entails, in part, conducting program reviews of Mental Health Plans (MHP) which may result in Medi-Cal disallowances and Plans of Correction.

The Department convened a workgroup with representation from the County Mental Health Directors Association (CMHDA), provider (subcontractor) organizations and Department staff to discuss these concerns and explore possible solutions. These subcontractors' chief concern regarding the EPSDT appeals process was that subcontractors could not directly appeal to the Department without the MHP's agreement to submit the appeal on the subcontractor's behalf. Additionally, providers wanted assurance that the MHP could not block their appeal submission.

A progressive appeal process with the ability for the MHP subcontractors to directly appeal to the Department was placed in Assembly Bill 1780. This bill was signed into law on September 26, 2008 and required the Department to propose a rulemaking package by no later than the end of the 2008-09 fiscal year to address the existing appeals process.

This proposed regulation package will provide an appeal process that includes a progressive process to resolve disputes about claims or recoupment relating to specialty mental health services under the Medi-Cal specialty mental health services waiver. Also these regulations allow for the MHP subcontractor to appeal directly to the Department.

**Subchapter 1. General Provisions**  
**Article 2. Definitions, Abbreviations and Program Terms**

**Section. 1810.203.5. Appeal**

**Section 1810.203.5, Subdivision (d)**

**Specific Purpose:** Subdivision (d) of Section 1810.203.5 is added to expand the definition of "appeal" to include MHP and/or MHP subcontractor's request for a review of the client record review findings.

**Rationale for Necessity:** This amendment is necessary to make clear that the MHP and/or MHP subcontractor are part of this appeal process.

**Subchapter 5. Problem Resolutions Processes**  
**Article 3. Provider Problem Resolution and Appeal Processes**

**Section 1850.350 MHP/MHP Subcontractor Client Record Review Findings Appeal Process**

**Section 1850.350, Subdivisions (a) and (a)(1)(A)-(B)**

**Specific Purpose:** Subdivisions (a) and (a)(1)(A)-(B) of Section 1850.350 are adopted to identify the progressive appeal process that is available to the MHPs and MHP subcontractors.

**Rationale for Necessity:** These regulations are necessary to identify that there are two (2) different levels in the progressive appeals process to be used by MHPs and MHP subcontractors.

**Section 1850.350, Subdivision (a)(2)**

**Specific Purpose:** Subdivision (a)(2) of Section 1850.350 is adopted to identify the type of action that may be appealed using this process.

**Rationale for Necessity:** This regulation is necessary to make clear to the MHPs or MHP subcontractors that this appeal process is limited to disallowances resulting from client record review findings in dispute.

**Section 1850.350, Subdivisions (b) and (b)(1)**



**Specific Purpose:** Subdivisions (b) and (b)(1) of Section 1850.350 are adopted to provide standards for filing an informal appeal.

**Rationale for Necessity:** These regulations are necessary to establish timeframes by which a MHP or MHP subcontractor must file an appeal related to the findings of a client record review resulting in a disallowance of paid claims. The Department chose the 60 calendar day timeframe since it mirrors timeframes that are used by other departments, specifically the Department of Health Care Services, which hear similar appeals.

**Section 1850.350, Subdivisions (b)(2) and (b)(2)(A)-(D)**

**Specific Purpose:** Subdivisions (b)(2) and (b)(2)(A)-(D) of Sections 1850.350 are adopted to specify what information is needed when an informal appeal request is made.

**Rationale for Necessity:** These regulations are necessary to make clear to the MHP or MHP subcontractor what information is required when requesting an informal appeal from the Department. The contact information is necessary to identify who is responsible for filing the appeal. It is also necessary to understand the reason for the appeal and for the MHP or MHP subcontractor to provide any additional information that would support the appeal. This information is essential in order for the Department to be able to make an appropriate decision.

**Section 1850.350, Subdivisions (b)(3) and (b)(3)(A)-(B)**

**Specific Purpose:** Subdivisions (b)(3) and (b)(3)(A)-(B) of Sections 1850.350 are adopted to specify to the MHP subcontractor the protocols to follow and to identify what documents are required to be sent to the MHP when filing an informal appeal request.

**Rationale for Necessity:** This regulation is necessary to make clear to the MHP subcontractor that the MHP must be notified and provided with all the documentation when the MHP subcontractor is requesting an informal appeal with the Department. This is intended to keep the MHP informed about appeal actions their subcontractor is taking.

**Section 1850.350, Subdivisions (b)(4) and (b)(4)(A)-(B)**

**Specific Purpose:** Subdivisions (b)(4) and (b)(4)(A)-(B) of Section 1850.350 are adopted to specify to the MHP the protocols to follow and to identify what documents are required to be sent to the MHP subcontractor when filing an informal appeal request.

**Rationale for Necessity:** This regulation is necessary to make clear to the MHP that the MHP subcontractor must be notified and provided with all documentation when the MHP is requesting an informal appeal with the Department, and the matter involves the

MHP subcontractor. This is intended to keep the MHP subcontractor informed about actions the MHP is taking regarding a matter that affects the subcontractor.

**Section 1850.350, Subdivisions (b)(5) and (b)(5)(A)-(B)**

**Specific Purpose:** Subdivisions (b)(5) and (b)(5)(A)-(B) of Section 1850.350 are adopted to provide standards for a progressive appeal process.

**Rationale for Necessity:** These regulations are necessary to establish a timeframe and procedure by which DMH will render a decision on an informal appeal request by an MHP or MHP subcontractor based on the information provided. The Department chose the 30 calendar day timeframe because it mirrors timeframes that are used by other departments, specifically the Department of Health Care Services, which hears similar appeals. Additionally, this regulation allows the MHP or MHP subcontractor the option to request a telephone or face to face conference as a part of the informal appeal process.

**Section 1850.350, Subdivision (b)(6)**

**Specific Purpose:** Subdivision (b)(6) of Section 1850.350 is adopted to provide standards for determining when a decision rendered from an informal appeal is final.

**Rationale for Necessity:** This regulation is necessary to make clear to the MHP or MHP subcontractor that, unless the entity who initiated the informal appeal makes a request for a formal appeal, the decision rendered by the Department during the informal appeal process is final.

**Section 1850.350, Subdivision (c)**

**Specific Purpose:** Subdivision (c) of Section 1850.350 is adopted to provide that a formal appeal hearing will be filed with a State Agency designated by DMH and the timeframe in which the formal appeal request must be filed.

**Rationale for Necessity:** This regulation makes clear to the MHP or MHP subcontractor the timeframe that must be adhered to when a formal appeal is requested through the State Agency designated by DMH indicated on the notification of the informal appeal decision. The 30 day timeframe is consistent with timeframes that are used by other departments, specifically the Department of Health Care Services, which hears similar appeals.

**Section 1850.350, Subdivision (c)(1)**

**Specific Purpose:** Subdivision (c)(1) of Section 1850.350 is adopted to provide standards and timeframes for a formal appeal process.

**Rationale for Necessity:** This regulation is necessary to make clear to the MHP or MHP subcontractor that a formal appeal may be filed only after the Department has issued a written decision on the informal appeal. The formal appeal request can only address same matter that was considered during the informal appeal process.

**Section 1850.350, Subdivision (c)(2)**

**Specific Purpose:** Subdivision (c)(2) of Section 1850.350 is adopted to provide standards for determining who can file a formal appeal.

**Rationale for Necessity:** The regulation is necessary to make clear to the MHP or MHP subcontractor that only the entity that initiated the informal appeal may request a formal appeal on the same matter.

**Section 1850.350, Subdivision (c)(3)**

**Specific Purpose:** Subdivision (c)(3) of Section 1850.350 is adopted to provide notification procedures for the appellant when submitting a formal appeal request.

**Rationale for Necessity:** The regulation is necessary to inform the appellant that a copy of the formal appeal request must be provided to the Department and the MHP or MHP subcontractor (when the matter involves the subcontractor) at the same time the formal appeal is filed. This is intended to keep all entities informed regarding formal appeals that affect them.

**Section 1850.350, Subdivision (d)**

**Specific Purpose:** Subdivision (d) of Section 1850.350 is adopted to provide standards for who can conduct a formal appeal hearing.

**Rationale for Necessity:** This regulation is necessary to make clear that the Department must engage an independent entity for conducting the formal hearing. This provides an impartial examination of the information provided by both the Department and the MHP or MHP subcontractor.

**Section 1850.350, Subdivision (e)**

**Specific Purpose:** Subdivision (e) of Section 1850.350 is adopted to specify the standards under which the formal appeal hearing will be conducted.

**Rationale for Necessity:** This regulation is necessary to provide the legal procedures that are to be followed when conducting the formal appeal hearing. This section references the legal standards found in Title 22, Division 3, Subdivision 1, Chapter 3, Article 1.5 used by the Department of Health Care Services (DHCS) to conduct formal appeal hearings. It is appropriate for this Department's regulations to reference DHCS regulations and follow the same hearing procedures, since DHCS conducts hearings for

other Medi-Cal issues and is considered by the federal government as the single State Agency for health care.

**Section 1850.350, Subdivision (f)**

**Specific Purpose:** Subdivision (f) of Section 1850.350 is adopted to specify when a decision from a formal appeal is final.

**Rationale for Necessity:** The regulation is necessary to make clear that a formal appeal decision from a hearing officer or administrative law judge is not final until adopted.

**OTHER REQUIRED SHOWINGS – GOVERNMENT CODE 11346.2(b)(2)-(4)**

Studies, Reports, or Documents Relied Upon – Gov. Code 11346.2(b)(2): None

Reasonable Alternatives Considered – Gov. Code 11346.2(b)(3)(A): None

Reasonable Alternatives That Would Lessen the Impact on Small Businesses – Gov. Code 11346.2(b)(3)(B): None

Evidence Relied Upon to Support the Initial Determination That the Regulations Will Not Have A Significant Adverse Economic Impact on Business – Gov. Code 11346.2(b)(4): The proposed regulation will not have a significant adverse impact upon business since it applies only to an administrative (appeals) process between the MHP and/or MHP subcontractors and the Department and costs will be covered within existing resources. The Department may use the Federal Financial Participation (FFP) or other departmental resources.

Duplication or Conflicts with Federal Regulations – Gov. Code 11346.2(b)(5): None. There are no Federal Regulations on the subject since these regulations are required by State statute.